

**Introduced by Senator Leslie**

February 18, 1998

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An act to amend Section ~~646.9~~ 1708.7 of the Civil Code, and to amend Sections 422, 646.9, and 653m of the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

SB 1796, as amended, Leslie. Stalking: cyberstalking.

(1) Existing law provides that a person is liable for the tort of stalking when the defendant engaged in a pattern of conduct intended to follow, alarm, or harass, resulting in the plaintiff reasonably fearing for his or her safety or the safety of an immediate family member, where the defendant has either made a credible threat or violated a restraining order.

This bill would expand the definition of "credible threat" to include threats made electronically, whether over the Internet or by other means of electronic communication.

(2) Existing law prohibits the willful issuance of a threat to commit a crime which will result in the death or great bodily injury of another, with the specific intent that the statement be taken as a threat even if there is no actual intent of carrying out the crime, where the threat is so unequivocal, immediate, and specific so as to cause the recipient to reasonably be in sustained fear for his or her own safety or the safety of his or her immediate family.

This bill would clarify that this provision applies to threatening statements made verbally, in writing, or

*electronically, whether via the Internet or by other means of electronic communication.*

(3) Existing law prohibits *stalking*, which is defined as the willful, malicious, and repeated following or harassing of another, where a credible threat, as defined, has been communicated to the victim with the intent of placing the victim in reasonable fear for his or her safety.

This bill would expand the definition of ~~credible threat~~ “credible threat” to include threats communicated by ~~electronic means of a telecommunication device, whether via computer network or other means of electronic communication.~~

(4) Existing law prohibits, regardless of the good faith of the caller, the making of telephone calls to others with the intent to annoy, where the caller either uses obscene language or makes threats to the other parties person or property. Existing law also prohibits the repeated telephoning of another at the recipient’s residence or, under certain circumstances, place of work, with the intent to annoy, except where the repeated telephoning is conducted in good faith.

This bill would expand these provisions to include the sending of electronic communications, and would apply a good faith exception to obscene and threatening communications. The bill would also provide that violations of this section may be deemed to have been committed where the telephone call was made or received, or in the case of electronic communications, the location from which the communication was sent, was received by the recipient’s service provider, was first viewed by the recipient, or at the recipient’s permanent address. ~~By changing the definition of~~ ~~a~~ expanding the scope of an existing crime, this bill would increase local prosecution and incarceration costs, and therefore would impose a state-mandated local program.

(2)

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. *It is the intent of this act to clarify that*  
2 *electronic communications are included in the actions*  
3 *that can constitute the crimes of harassment and stalking.*  
4 *It is not the intent of the Legislature, by adoption of this*  
5 *act, to restrict in any way the types of conduct or actions*  
6 *that can constitute harassment or stalking.*

7     SEC. 2. *Section 1708.7 of the Civil Code is amended*  
8 *to read:*

9     1708.7. (a) A person is liable for the tort of stalking  
10 when the plaintiff proves all the following elements of the  
11 tort:

12     (1) The defendant engaged in a pattern of conduct the  
13 intent of which was to follow, alarm, or harass the  
14 plaintiff. In order to establish this element, the plaintiff  
15 shall be required to support his or her allegations with  
16 independent corroborating evidence.

17     (2) As a result of that pattern of conduct, the plaintiff  
18 reasonably feared for his or her safety, or the safety of an  
19 immediate family member. For purposes of this  
20 paragraph, “immediate family” means a spouse, parent,  
21 child, any person related by consanguinity or affinity  
22 within the second degree, or any person who regularly  
23 resides, or, within the six months preceding any portion  
24 of the pattern of conduct, regularly resided, in the  
25 plaintiff’s household.

26     (3) One of the following:

27     (A) The defendant, as a part of the pattern of conduct  
28 specified in paragraph (1), made a credible threat with  
29 the intent to place the plaintiff in reasonable fear for his  
30 or her safety, or the safety of an immediate family  
31 member and, on at least one occasion, the plaintiff clearly  
32 and definitively demanded that the defendant cease and  
33 abate his or her pattern of conduct and the defendant  
34 persisted in his or her pattern of conduct.

1 (B) The defendant violated a restraining order,  
2 including, but not limited to, any order issued pursuant  
3 to Section 527.6 of the Code of Civil Procedure,  
4 prohibiting any act described in subdivision (a).

5 (b) For the purposes of this section:

6 (1) “Pattern of conduct” means conduct composed of  
7 a series of acts over a period of time, however short,  
8 evidencing a continuity of purpose. Constitutionally  
9 protected activity is not included within the meaning of  
10 “pattern of conduct.”

11 (2) “Credible threat” means a ~~verbal or written~~ threat  
12 *made verbally, in writing, or electronically, whether via*  
13 *the Internet or by other means of electronic*  
14 *communication*, or a threat implied by a pattern of  
15 conduct or a combination of ~~verbal or written~~ statements  
16 *made verbally, in writing, or electronically, whether via*  
17 *the Internet or by other means of electronic*  
18 *communication*, and conduct made with the intent and  
19 the apparent ability to carry out the threat so as to cause  
20 the person who is the target of the threat to reasonably  
21 fear for his or her safety or the safety of his or her  
22 immediate family.

23 (3) “Harass” means a knowing and willful course of  
24 conduct directed at a specific person which seriously  
25 alarms, annoys, torments, or terrorizes the person, and  
26 which serves no legitimate purpose. The course of  
27 conduct must be such as would cause a reasonable person  
28 to suffer substantial emotional distress, and must actually  
29 cause substantial emotional distress to the person.

30 (c) A person who commits the tort of stalking upon  
31 another is liable to that person for damages, including, but  
32 not limited to, general damages, special damages, and  
33 punitive damages pursuant to Section 3294.

34 (d) In an action pursuant to this section, the court may  
35 grant equitable relief, including, but not limited to, an  
36 injunction.

37 (e) The rights and remedies provided in this section  
38 are cumulative and in addition to any other rights and  
39 remedies provided by law.

(f) This section shall not be construed to impair any constitutionally protected activity, including, but not limited to, speech, protest, and assembly.

*SEC. 3. Section 422 of the Penal Code is amended to read:*

422. Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, *made verbally, in writing, or electronically, whether via the Internet or by other means of electronic communication*, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

For the purposes of this section, "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

*SEC. 4. Section 646.9 of the Penal Code is amended to read:*

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any

1 other court order in effect prohibiting the behavior  
2 described in subdivision (a) against the same party, shall  
3 be punished by imprisonment in the state prison for two,  
4 three, or four years.

5 (c) Every person who, having been convicted of a  
6 felony under this section, commits a second or subsequent  
7 violation of this section shall be punished by  
8 imprisonment in the state prison for two, three, or four  
9 years.

10 (d) In addition to the penalties provided in this  
11 section, the sentencing court may order a person  
12 convicted of a felony under this section to register as a sex  
13 offender pursuant to subparagraph (E) of paragraph (2)  
14 of subdivision (a) of Section 290.

15 (e) For the purposes of this section, “harasses” means  
16 a knowing and willful course of conduct directed at a  
17 specific person that seriously alarms, annoys, torments, or  
18 terrorizes the person, and that serves no legitimate  
19 purpose. This course of conduct must be such as would  
20 cause a reasonable person to suffer substantial emotional  
21 distress, and must actually cause substantial emotional  
22 distress to the person.

23 (f) For purposes of this section, “course of conduct”  
24 means a pattern of conduct composed of a series of acts  
25 over a period of time, however short, evidencing a  
26 continuity of purpose. Constitutionally protected activity  
27 is not included within the meaning of “course of  
28 conduct.”

29 (g) For the purposes of this section, “credible threat”  
30 ~~means a verbal or written threat, a threat communicated~~  
31 ~~by means of a telecommunications device, or a threat~~  
32 *means a threat made verbally, in writing, or*  
33 *electronically, whether via computer network or by other*  
34 *means of electronic communication, or a threat implied*  
35 *by a pattern of conduct or a combination of verbal—*~~or~~  
36 ~~written, written, or electronically communicated~~  
37 *statements and conduct made with the intent to place the*  
38 *person that is the target of the threat in reasonable fear*  
39 *for his or her safety or the safety of his or her family and*  
40 *made with the apparent ability to carry out the threat so*

1 as to cause the person who is the target of the threat to  
2 reasonably fear for his or her safety or the safety of his or  
3 her family. It is not necessary to prove that the defendant  
4 had the intent to actually carry out the threat. The  
5 present incarceration of a person making the threat shall  
6 not be a bar to prosecution under this section.

7 (h) This section shall not apply to conduct that occurs  
8 during labor picketing.

9 (i) If probation is granted, or the execution or  
10 imposition of a sentence is suspended, for any person  
11 convicted under this section, it shall be a condition of  
12 probation that the person participate in counseling, as  
13 designated by the court. However, the court, upon a  
14 showing of good cause, may find that the counseling  
15 requirement shall not be imposed.

16 (j) The sentencing court also shall consider issuing an  
17 order restraining the defendant from any contact with  
18 the victim, that may be valid for up to 10 years, as  
19 determined by the court. It is the intent of the Legislature  
20 that the length of any restraining order be based upon the  
21 seriousness of the facts before the court, the probability  
22 of future violations, and the safety of the victim and his or  
23 her immediate family.

24 (k) For purposes of this section, “immediate family”  
25 means any spouse, parent, child, any person related by  
26 consanguinity or affinity within the second degree, or any  
27 other person who regularly resides in the household, or  
28 who, within the prior six months, regularly resided in the  
29 household.

30 (l) The court shall consider whether the defendant  
31 would benefit from treatment pursuant to Section 2684.  
32 If it is determined to be appropriate, the court shall  
33 recommend that the Department of Corrections make a  
34 certification as provided in Section 2684. Upon the  
35 certification, the defendant shall be evaluated and  
36 transferred to the appropriate hospital for treatment  
37 pursuant to Section 2684.

38 ~~SEC. 2.~~

39 *SEC. 5. Section 653m of the Penal Code is amended*  
40 *to read:*

1 653m. (a) Every person who, with intent to annoy,  
2 telephones *or sends electronic communication to* another  
3 and addresses to or about the other person any obscene  
4 language or addresses to the other person any threat to  
5 inflict injury to the person or property of the person  
6 addressed or any member of his or her family, is guilty of  
7 a misdemeanor. *Nothing in this subdivision shall apply to*  
8 *telephone calls or electronic communications made in*  
9 *good faith.*

10 (b) Every person who makes repeated telephone calls  
11 *or sends repeated electronic communications* with intent  
12 to annoy another person at his or her residence, is,  
13 whether or not conversation ensues from making the  
14 telephone call *or sending the electronic communication,*  
15 guilty of a misdemeanor. Nothing in this subdivision shall  
16 apply to telephone calls *or electronic communications*  
17 made in good faith.

18 (c) Every person who makes repeated telephone calls  
19 *or sends repeated electronic communications* with the  
20 intent to annoy another person at his or her place of work  
21 is guilty of a misdemeanor punishable by a fine of not  
22 more than one thousand dollars (\$1,000), or by  
23 imprisonment in a county jail for not more than one year,  
24 or by both the fine and imprisonment. Nothing in this  
25 subdivision shall apply to telephone calls *or electronic*  
26 *communications* made in good faith. This subdivision  
27 applies only if one or both of the following circumstances  
28 exist:

29 (1) There is a temporary restraining order, an  
30 injunction, or any other court order, or any combination  
31 of these court orders, in effect prohibiting the behavior  
32 described in this section.

33 (2) The person makes repeated telephone calls *or*  
34 *sends repeated electronic communications* with the  
35 intent to annoy another person at his or her place of work,  
36 totaling more than 10 times in a 24-hour period, whether  
37 or not conversation ensues from making the telephone  
38 call *or sending the electronic communication,* and the  
39 repeated telephone calls *or electronic communications*  
40 are made to the workplace of an adult or fully



1 emancipated minor who is a spouse, former spouse,  
2 cohabitant, former cohabitant, or person with whom the  
3 person has a child or has had a dating or engagement  
4 relationship or is having a dating or engagement  
5 relationship.

6 (d) Any offense committed by use of a telephone—  
7 ~~provided in this section may be deemed to have been~~  
8 ~~committed at either the place at which the telephone call~~  
9 ~~or calls were made or at the place where the telephone~~  
10 ~~call or calls were received~~ *may be deemed to have been*  
11 *committed where the telephone call was made or*  
12 *received. Any offense committed by use of an electronic*  
13 *communication device or medium, including the*  
14 *Internet, may be deemed to have been committed where*  
15 *the electronic communication was (1) originally sent; (2)*  
16 *received by the recipient's electronic communications*  
17 *service provider; (3) first viewed by the recipient; or (4)*  
18 *at the recipient's permanent residence.*

19 (e) Subdivision (a), (b), or (c) is violated when the  
20 person acting with intent to annoy makes a telephone call  
21 requesting a return call and performs the acts prohibited  
22 under subdivision (a), (b), or (c) upon receiving the  
23 return call.

24 (f) If probation is granted, or the execution or  
25 imposition of sentence is suspended, for any person  
26 convicted under this section, the court may order as a  
27 condition of probation that the person participate in  
28 counseling.

29 (g) *“Electronic communication” has the same*  
30 *meaning as the term defined in Section 2510 of Title 18 of*  
31 *the United States Code Annotated.*

32 SEC. 6. No reimbursement is required by this act  
33 pursuant to Section 6 of Article XIII B of the California  
34 Constitution because the only costs that may be incurred  
35 by a local agency or school district will be incurred  
36 because this act creates a new crime or infraction,  
37 eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section  
39 17556 of the Government Code, or changes the definition

1 of a crime within the meaning of Section 6 of Article  
2 XIII B of the California Constitution.  
3 Notwithstanding Section 17580 of the Government  
4 Code, unless otherwise specified, the provisions of this act  
5 shall become operative on the same date that the act  
6 takes effect pursuant to the California Constitution.

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